

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

THE HILLMAN GROUP, INC.

v.

KEYME, LLC

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Case No. 2:19-cv-209- JRG

**MINUTES FOR FINAL PRETRIAL CONFERENCE
HELD BEFORE U. S. DISTRICT JUDGE RODNEY GILSTRAP
March 23, 2021**

OPEN: 10:06 AM**ADJOURN: 4:48 PM**

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| ATTORNEYS FOR PLAINTIFF: | See attached. |
| ATTORNEYS FOR DEFENDANT: | See attached. |
| LAW CLERKS: | Lee Matalon Will Nilsson Tom Derbish |
| COURT REPORTER: | Shelly Holmes, CSR-TCRR |
| COURTROOM DEPUTY: | Andrea Brunson |

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| 10:06 AM | Court opened. Counsel announced ready for hearing. |

| TIME | MINUTES |
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| 10:08 AM | <p>Court provided instructions and housekeeping matters to the parties. Case is scheduled for jury selection on Monday, April 5, 2021. COVID protocols will be in place at that time. Trial will begin following the empanelment of the Jury. Eight jurors will be selected at jury selection. Counsel will be given 30 minutes per side for <i>voir dire</i>. The parties will be given 12 hours per side for the jury trial portion. Opening will be 30 minutes per side. Closings will be 40 minutes per side. Court to be notified by 10:00 p.m. each night of disputes re: demonstratives to be used the next day, or notification that there are no disputes. Email to the respective law clerk or 3-ring binders with disputed information are to be prepared and submitted to the Court by 7:00 a.m. the following day. The Court will be available in chambers by 7:30 a.m. every morning to take up any housekeeping matters or late-arriving disputes that might come up during trial. Court instructed the parties to review the Court's updated Standing Order re: Juror Questionnaires, if applicable, and follow the instructions from Deputy Clerk in Charge, Mrs. Kecia Clendening re: receipt, review and return of the Juror Questionnaires. The Court will hold an informal charge conference after the close of evidence. Same will be held in the courtroom and off the record. The formal charge conference will follow thereafter. Instructions by the Court re: sealing of the courtroom during trial re: confidential information. If the parties plan to present a kiosk as demonstrative evidence at the time of trial, specifics of same are to be communicated to the Court. Parties are to confer with the Court at such time when audio visual equipment is ready for presentment during trial. Juror notebooks to be delivered to chambers no later than noon on Monday, March 29, 2021. Notebooks to contain: Copies of patents-in-suit (single-sided); claim construction chart (single-sided); Page for each witness with a headshot photo, name and ruled lines for notetaking; notepad and non-clicking pen. Counsel and their trial teams and clients to remain masked in the courtroom at all times except when speaking from the podium. No more than three people for each side at counsel table. During jury selection, challenge for cause will be conducted in the Jury Room.</p> |
| 10:38 AM | <p>Disputed dispositive motion #1: Court heard argument on Defendant's Motion for Summary Judgment of Non-Infringement of U.S. Patent No. 10,400,474 (Dkt. No.169). Mr. Pak argued for the Defendant.</p> |
| 10:57 AM | <p>The Court heard responsive argument on Defendant's Motion for Summary Judgment of Non-Infringement of U.S. Patent No. 10,400,474 (Dkt. No. 169) from Mr. Ivey on behalf of the Plaintiff.</p> |
| 11:19 AM | <p>Rebuttal argument by Mr. Pak for the Defendant.</p> |
| 11:25 AM | <p>Disputed dispositive motions #2: Court heard argument on Defendant's Corrected Motion for Partial Summary Judgment of No Willful Infringement (Dkt. No. 171) and Defendant's Motion for Partial Summary Judgment of No Willful Infringement (Dkt. No. 243). Mr. Nardinelli argued on behalf of the Defendant.</p> |
| 11:34 AM | <p>The Court heard responsive argument on Defendant's Corrected Motion for Partial Summary Judgment of No Willful Infringement (Dkt. No. 171) and Defendant's Motion for Partial Summary Judgment of No Willful Infringement (Dkt. No. 243) from Mr. O'Quinn on behalf of the Plaintiff.</p> |

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| 11:39 AM | Rebuttal argument by Mr. Nardinelli for the Defendant. |
| 11:41 AM | Disputed dispositive motions #3: Court heard argument on Defendant's Motion to Exclude the Testimony of Damages Expert W. Todd Schoettelkotte (Dkt. No. 170) and Defendant's Motion to Exclude the Testimony of Damages Expert W. Todd Schoettelkotte (Dkt. No. 244). Mr. Nelson argued on behalf of the Defendant. |
| 11:57 AM | The Court heard responsive argument on Defendant's Motion to Exclude the Testimony of Damages Expert W. Todd Schoettelkotte (Dkt. No. 170) and Defendant's Motion to Exclude the Testimony of Damages Expert W. Todd Schoettelkotte (Dkt. No. 244) from Mr. Williamson on behalf of the Plaintiff. |
| 12:13 PM | Rebuttal argument by Mr. Nelson for the Defendant. |
| 12:14 PM | Recess for lunch. |
| 01:30 PM | Court reconvened. |
| 01:30 PM | Court reviewed briefing and considered the arguments of counsel and will generate a written opinion. The Court proceeded with an oral pronouncement re: the disputed dispositive motions. RE: Defendant's Motion for Summary Judgment of Non-Infringement of U.S. Patent No. 10,400,474 (Dkt. No. 169) – GRANTED-IN-PART and DENIED-IN-PART for the reasons set forth in the record. RE: Defendant's Corrected Motion for Partial Summary Judgment of No Willful Infringement (Dkt. No. 171) and Defendant's Motion for Partial Summary Judgment of No Willful Infringement (Dkt. No. 243) – DENIED. RE: Defendant's Motion to Exclude the Testimony of Damages Expert W. Todd Schoettelkotte (Dkt. No. 170) and Defendant's Motion to Exclude the Testimony of Damages Expert W. Todd Schoettelkotte (Dkt. No. 244) – DENIED. |
| 01:32 PM | Before proceeding with disputes re: motions in limine and exhibits, the Court requested the parties to meet and confer in an attempt to narrow the disputed issues. |
| 01:33 PM | Recess. |
| 01:46 PM | Court reconvened. |
| 01:47 PM | The Court heard argument on Plaintiff's Motion in Limine No. 1. Mr. Williamson argued on behalf of the Plaintiff. Mr. Dacus argued on behalf of the Defendant. The Court GRANTED-IN-PART and DENIED-IN-PART Motion in Limine No. 1 for the reasons set forth in the record. |
| 01:57 PM | The Court heard a clarification request by Mr. Williamson. |

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| 02:00 PM | <p>The Court heard argument on Plaintiff's Motions in Limine. Mr. O'Quinn argued on behalf of Plaintiff. Mr. Nardinelli argued on behalf of the Defendant.</p> <p>MIL 2: Granted as Agreed MIL 3: Granted as Agreed MIL 4: Granted as Agreed MIL 5: Granted as Agreed MIL 6: Granted MIL 7: Granted as Agreed MIL 8: Granted as Agreed MIL 9: Granted as Agreed MIL 10: Granted as Agreed MIL 11: Granted MIL 12: Granted MIL 13: Granted as Agreed MIL 14: Granted as Agreed MIL 15: Granted MIL 16: Granted MIL 17: Granted</p> <p>The Court heard argument on Defendant's Motions in Limine. Ms. Regan argued on behalf of the Plaintiff. Mr. Dacus and Mr. Flood argued on behalf of the Defendant.</p> <p>MIL 1: Granted MIL 2: Granted as Agreed MIL 3: Granted as Agreed MIL 4: Granted as Agreed MIL 5: Granted as Agreed MIL 6: Granted MIL 7: Granted as Agreed MIL 8: Granted as Agreed MIL 9: Granted as Agreed MIL 10: Granted</p> |
| 02:40 PM | Completion of disputed Motions in Limine. |
| 02:40 PM | Before proceeding with disputes re: exhibits, the Court requested the parties to meet and confer in an attempt to narrow the disputed issues. |
| 02:41 PM | Recess. |
| 03:05 PM | Court reconvened. |
| 03:05 PM | Court asked the parties re: agreements narrowing the disputed groups or categories of exhibits. Parties indicated disputed issues re: Category 18 (DX 67) and Category 26 (PTX 71 and PTX 558) have been resolved and are withdrawn. |

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| 03:07 PM | The Court heard argument re: Category 1 (DX 25 and DX 27). Mr. Flood argued for the Defendant and Ms. Regan argued for the Plaintiff. Parties' agreement to redact same. Parties also agree to Category 19 redaction and Exhibits DX 62, DX 65 and DX 279 are withdrawn. |
| 03:10 PM | The Court heard argument re: Category 12 (DX 1698). Ms. Regan argued for the Plaintiff and Mr. Flood argued for the Defendant. Court excluded DX 1698 and not pre-admitted. |
| 03:14 PM | The Court heard argument re: Category 13 (DX 662 and DX 352). Ms. Regan argued for the Plaintiff and Mr. Flood argued for the Defendant. Court excluded DX 662 and not pre-admitted. Court took DX 352 under advisement and will render a ruling subsequent to the viewing of same. |
| 03:26 PM | The Court heard argument re: Category 15 (DX 33). Ms. Regan argued for the Plaintiff and Mr. Flood argued for the Defendant. Court sustained the objection to DX 33. |
| 03:30 PM | The Court heard argument re: Category 16. Ms. Regan argued for the Plaintiff and Mr. Nardinelli argued for the Defendant. The Court will not pre-admit as exhibits reports or schedules from reports from expert witnesses. Experts may use their attached exhibits as demonstratives during testimony. |
| 03:33 PM | The Court did not pre-admit Category 17 (DX 2394), |
| 03:33 P M | Category 18 and Category 19 were previously presented and argued. |
| 03:33 PM | The Court heard argument re: Category 20 (DX 34). Mr. O'Quinn argued for the Plaintiff and Mr. Flood argued for the Defendant. Court excludes DX 34 and sustains the objection by Plaintiff. |
| 03:36 PM | The Court heard argument re: Category 21 (PTX 653 and PTX 654). Mr. Flood argued for the Defendant and Mr. O'Quinn argued for the Plaintiff. Court did not pre-admit PTX 653 and PTX 654. |
| 03:45 PM | The Court heard argument re: Category 22 (PTX 178, PTX 245 and PTX 550). Mr. Flood argued for the Defendant and Ms. Regan argued for the Plaintiff. Court pre-admitted PTX 178, PTX 245 and PTX 550. |
| 03:52 PM | The Court heart argument re: Category 23 (PTX 984 and PTX 985). Mr. Flood argued on behalf of Defendant and Mr. O'Quinn argued on behalf of Plaintiff. Court sustained Defendant's objection to PTX 984 and PTX 985 being pre-admitted exhibits. |
| 03:55 PM | The Court heard argument re: Category 24 (PTX 182 and PTX 667). The parties informed the Court that PTX 667 was withdrawn. Mr. Flood argued on behalf of the Defendant and Ms. Regan argued on behalf of the Plaintiff. Court pre-admitted PTX 182. |
| 04:02 PM | Category 25: Court excluded and exhibits are not pre-admitted. |
| 04:03 PM | The Court heard argument re: Category 26. Mr. O'Quinn argued on behalf of the Plaintiff and Mr. Nardinelli argued on behalf of the Defendant. The Court took under advisement those exhibits re: Category 26 and a ruling re: same will be forthcoming. |
| 04:15 PM | Mr. Dacus, on behalf of the Defendant, offered PTX 770. Mr. Findlay responded on behalf of Plaintiff. Court pre-admitted PTX 770. |

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| 04:31 PM | Mr. O'Quinn brought to the attention of the Court various Pre-Trial Order issues in dispute between the parties. Mr. Huang responded on behalf of the Defendant. The Court directed: (1) the parties file supplemental briefs re: this issue; (2) not more than five pages for each party; (3) deadline of 5:00 PM Thursday. |
| 04:41 PM | Mr. Williamson brought to the attention of the Court, an error in the Joint Pre-Trial Order. Parties are directed to file additional stipulations separately, with a courtesy copy delivered to the Court. |
| 04:42 PM | Re: Pre-Trial Order. Mr. Findlay requested a deadline for list of will call and may call witnesses. Mr. Dacus responded. Court ruled to leave the Pre-Trial Order as it is. |
| 04:47 PM | Pre-Trial conference completed. |
| 04:48 PM | Court adjourned. |